

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

SEP 24 2014

OFFICE OF
MANAGING DIRECTOR

Carol Zollars
Oak Associates, LTD
3875 Embassy Parkway, Suite 250
Akron, OH 44333-8355

Licensee/Applicant: **Oak Associates**
Waiver Request: Discontinuance of service;
erroneous invoice
Disposition: **Dismissed** (47 C.F.R. §§ 0.401,
1.955(a)(3), 1.1166, 1.1167, 1.1914)
Station: E040438
Fees: Fiscal Year (FY) 2010, FY 2011 and FY 2012
Regulatory Fees and Late Fees
Date Request Filed: Apr. 2, 2013
Date Regulatory Fees Paid: Not paid for FY 2010,
FY 2011 (Paid 6/21/13), and FY 2012 (Paid
5/30/13)
Date Regulatory Late Penalties Paid: Not paid for
FY 2010
Fee Control No.: RROG-13-00015081
Payment Amounts: See Fee Filer

Dear Ms. Zollars:

This responds to Licensee's *Request*¹ for waiver of the regulatory fees for Fiscal Year (FY) 2010, FY 2011, and FY 2012, which was submitted by email on April 2, 2013, when Licensee was delinquent in paying regulatory fees, so that its submission was subject to dismissal. Thereafter, as we explain below, Licensee paid the fees for FY 2011 and FY 2012, but remained delinquent in paying the FY 2010 regulatory fees. Accordingly, we dismiss the *Request*; however, as a courtesy we explain why the *Request* would be denied, even if Licensee was not a delinquent debtor.

On April 2, 2013, Licensee submitted its *Request* asserting that call sign E040438 was "taken out of operation ... sometime in 2007," thus the annual regulatory fees for the years from 2010 through 2012 are erroneous.

¹ Email from Carol Zollars (czollars@oakassociates.com) ARINQUIRIES (ARINQUIRIES@FCC.gov) (Apr. 2, 2013)(*Request*). A request to waive payment of a regulatory fee must follow procedures set forth at 47 C.F.R. § 1.1166, and a submission challenging the accuracy of the Commission's bill must comply with 47 C.F.R. § 1.1167. Licensee did not fully comply with these procedures.

On the date of its *Request*, Licensee was delinquent² in paying the Commission's regulatory fee for FY 2010, which was due August 31, 2010,³ the fee for FY 2011, which was due September 16, 2011,⁴ and the fee for FY 2012, which was due September 13, 2012.⁵ Indeed, Licensee acknowledged the delinquencies stemming from FY 2011 and FY 2012 by paying those fees, which the Commission posted on June 21, 2013, and May 30, 2013, respectively. However, because the FY 2010 regulatory fee remains unpaid, Licensee remains a delinquent debtor, and we dismiss the *Request*. Moreover, and in contrast to Licensee's assertion, the Commission's records show the call sign was not surrendered until March 26, 2012, when Licensee notified the International Bureau by letter surrendering the call sign.⁶

Under our rules, this license was not discontinued⁷ until the call sign was surrendered with Licensee's letter request,⁸ and until then, Licensee remained responsible for fees. Licensee's assertion in the *Request* that it believed the license ceased operations in the year 2007⁹ is not a legal ground to waive the fee or the penalties that accrued because of non-payment. Indeed, repeatedly, the Commission has held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."¹⁰

Every licensee is obliged to make the fee payment by the deadline. In such cases, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹¹ The penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is "only in the most extraordinary circumstances,"¹² which are not described in Licensee's situation. Thus, on these additional grounds, we would deny the *Request*.

² 47 C.F.R. § 1.1901(i).

³ See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

⁴ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

⁵ See FY 2012 Regulatory Fees Due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

⁶ Letter from Carol Zollars, Oak Associates, 3875 Embassy Pkwy, Suite 250, Akron, OH 44333-8355 to International Bureau, ATTN: Paul Blais [FCC, Washington, DC] (Mar. 26, 2012); FCC File No. SES-LIC-200411201680 (on 12/22/2004, the Commission granted Call Sign E040438, which has an expiration date of 12/22/2019).

⁷ See 47 C.F.R. 1.955(a)(3) ("A licensee who discontinues operations shall notify the Commission of the discontinuance of operations by submitting FCC Form 601 or 605 requesting license cancellation.").

⁸ Letter from Carol Zollars, *supra*. See FCC File No. SES-LIC-200411201680.

⁹ *Request*.

¹⁰ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

¹¹ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

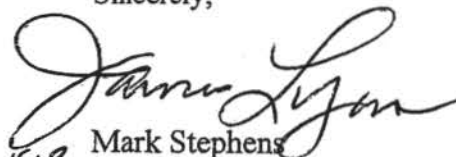
¹² *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

Refer to the Commission's fee filer website to determine a payoff, and thereafter make full payment without delay. Because Licensee is delinquent in paying a non-tax debt, under 47 C.F.R. § 1.1910, Licensee is subject to the Commission's red-light rule, and the Commission will withhold action on any application filed or pending and dismiss. *See* 47 C.F.R. §§ 1.1108, 1.1109, 1.1116, and 1.1118. Any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to rescission. Failure to make payment on any delinquent debt is subject to collection of the debt, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. § 3717. Moreover, the Commission may collect amounts due by administrative offset.¹³

Interest and penalties continue to accrue from the date of delinquency, and under the law,¹⁴ we will apply debt collection procedures.¹⁵ Moreover, under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,


SJR Mark Stephens
Chief Financial Officer

¹³ 47 C.F.R. § 1.1912.

¹⁴ *See* 47 C.F.R. § 1.1901, *et seq.*

¹⁵ *See* 31 C.F.R. § 3717.